

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
CLIFTON K. WILLIAMSON,

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Petitioner,

v.

9:02-CV-0044  
(LEK)(GJD)

J.W. BURGE, Superintendent, Auburn Correctional Facility,

Respondent.

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APPEARANCES:

OF COUNSEL:

CLIFTON K. WILLIAMSON  
Petitioner, *pro se*

OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEW YORK  
Counsel for the Respondent

STEVEN H. SCHWARTZ, ESQ.  
Assistant Attorney General

LAWRENCE E. KAHN, U.S. DISTRICT JUDGE

### ORDER

By Decision and Order filed September 28, 2005, the Report-Recommendation by Magistrate Judge Gustave J. Di Bianco was approved and adopted in its entirety and the amended petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 filed by petitioner was denied. Dkt. No. 48. Petitioner has appealed that dismissal to the United States Court of Appeals for the Second Circuit. Dkt. No. 50.

Presently before the Court is petitioner's request for a certificate of appealability ("COA"). Dkt. No. 53.

Appeals to the Court of Appeals in habeas corpus proceedings are governed by 28 U.S.C. § 2253, which provides in relevant part that:

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
  - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.<sup>1</sup>

A COA may only be issued “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

After reviewing the file, and for the reasons set forth in the Court’s Decision and Order and in the Report-Recommendation filed in this matter, the Court finds that petitioner has failed to make the showing required for issuance of a COA. Therefore, the Court denies his request.

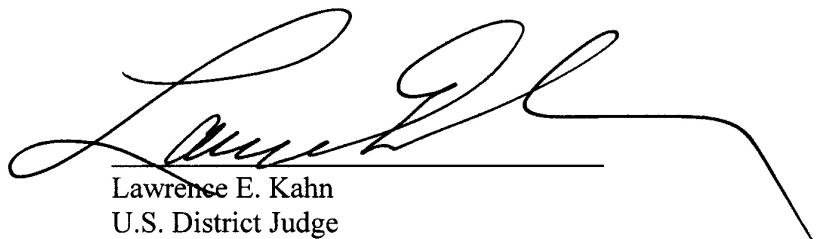
WHEREFORE, it is hereby

ORDERED, that petitioner's application for a Certificate of Appealability (Dkt. No. 53) is **DENIED**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: January 13, 2006  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge

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<sup>1</sup> Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed “unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” FED. R. APP. P. 22(b).